

112TH CONGRESS  
1ST SESSION

# H. R. 3184

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2011

Mr. JOHNSON of Georgia (for himself, Ms. BROWN of Florida, Mr. FILNER, Mr. RUSH, Ms. JACKSON LEE of Texas, Mrs. MALONEY, Mr. QUIGLEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DAVIS of Illinois, Ms. SCHAKOWSKY, Ms. WOOLSEY, Mr. TOWNS, Ms. KAPTUR, Mr. AL GREEN of Texas, Ms. NORTON, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Small Business Act to ensure fairness and transparency in contracting with small business concerns.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness and Trans-  
5 parency in Contracting Act of 2011”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the terms “Administration” and “Adminis-  
4 trator” mean the Small Business Administration  
5 and the Administrator thereof, respectively;

6 (2) the term “parent company”, relating to a  
7 business concern, means a person other than an in-  
8 dividual that owns not less than 51 percent of that  
9 business concern;

10 (3) the terms “small business concern”, “small  
11 business concern owned and controlled by veterans”,  
12 “small business concern owned and controlled by  
13 service-disabled veterans”, and “small business con-  
14 cern owned and controlled by women” have the  
15 meanings given those terms in section 3 of the Small  
16 Business Act (15 U.S.C. 632), as amended by this  
17 Act; and

18 (4) the term “small business concern owned  
19 and controlled by socially and economically disadvan-  
20 taged individuals” has the meaning given that term  
21 in section 8(d)(3)(C) of the Small Business Act (15  
22 U.S.C. 637(d)(3)(C)).

23 **SEC. 3. PURPOSE.**

24 The purpose of this Act is to modify the definitions  
25 relating to whether a business concern qualifies as a small  
26 business concern to establish additional requirements that

1 ensure that no publically traded business concern, sub-  
2 sidiary of a publically traded business concern, foreign-  
3 owned business concern, or subsidiary of a foreign-owned  
4 business concern is considered a small business concern  
5 for the purpose of Federal Government contracting and  
6 subcontracting, including for procurement goals.

7 **SEC. 4. DEFINITION OF SMALL BUSINESS CONCERN AND**  
8 **STATUS REVIEW.**

9 Section 3(a) of the Small Business Act (15 U.S.C.  
10 632(a)) is amended by adding at the end the following:

11 “(6) INDEPENDENTLY OWNED AND OPERATED.—

12 “(A) IN GENERAL.—In this subsection, the  
13 term ‘independently owned and operated’ does not  
14 include a business concern—

15 “(i) that is—

16 “(I) an issuer of a class of securities  
17 registered or that is required to be reg-  
18 istered pursuant to section 12 of the Secu-  
19 rities Exchange Act of 1934 (15 U.S.C.  
20 78l) or that is required to file reports pur-  
21 suant to section 15(d) of that Act (15  
22 U.S.C. 78o(d)); or

23 “(II) owned by an issuer of a class of  
24 securities registered or that is required to  
25 be registered pursuant to section 12 of the

1 Securities Exchange Act of 1934 (15  
2 U.S.C. 78l) or that is required to file re-  
3 ports pursuant to section 15(d) of that Act  
4 (15 U.S.C. 78o(d)); or

5 “(ii) more than 50 percent of which is  
6 owned, directly or indirectly, by one or more in-  
7 dividuals that are not United States citizens.

8 “(B) ENTITIES.—In determining ownership of  
9 a business concern, any interest in the business con-  
10 cern that is owned by a person that is not an indi-  
11 vidual (including a corporation, partnership, estate,  
12 or trust) shall be considered owned proportionately  
13 by or for the individuals that own that person.”.

14 **SEC. 5. NOTIFICATION.**

15 (a) IN GENERAL.—Not later than 6 months after the  
16 date of enactment of this Act, the Administrator shall no-  
17 tify the head of each Federal department or agency re-  
18 garding this Act and the amendments made by this Act.

19 (b) TO CONTRACTORS.—Not later than 6 months  
20 after receiving notice under subsection (a), the head of a  
21 Federal department or agency shall notify any contractor  
22 of that department or agency regarding this Act and the  
23 amendments made by this Act.

1 **SEC. 6. REPORTING.**

2 (a) IN GENERAL.—Not later than 6 months after the  
3 end of each fiscal year, the Administrator shall publish  
4 a report regarding prime contracts with the Federal Gov-  
5 ernment awarded to business concerns that were identified  
6 as small business concerns for the purposes of achieving  
7 the small business contracting goals of the Federal Gov-  
8 ernment during the previous fiscal year.

9 (b) CONTENTS.—

10 (1) IN GENERAL.—Each report under sub-  
11 section (a) shall, for the fiscal year before the year  
12 in which that report is published, include—

13 (A) the name of each small business con-  
14 cern, small business concern owned and con-  
15 trolled by socially and economically disadvan-  
16 taged individuals, small business concern owned  
17 and controlled by women, small business con-  
18 cern owned and controlled by veterans, and  
19 small business concern owned and controlled by  
20 service-disabled veterans that was awarded a  
21 prime contract with the Federal Government;  
22 and

23 (B) for each small business concern de-  
24 scribed in subparagraph (A), the total dollar  
25 amount of prime contracts with the Federal

1 Government awarded to that small business  
2 concern in descending order.

3 (2) PARENT COMPANIES.—If a small business  
4 concern described in paragraph (1)(A) has a parent  
5 company, the Administrator shall report information  
6 relating to any prime contract with the Federal Gov-  
7 ernment of that small business concern under the  
8 name of that parent company.

9 (c) AVAILABILITY.—The Administrator shall make  
10 each report under subsection (a) available on the Web site  
11 of the Administration in a manner that is easily accessible  
12 by members of the public.

13 **SEC. 7. LIST OF CONTRACTORS.**

14 (a) IN GENERAL.—Each Federal department and  
15 agency shall publish on the Web site of that department  
16 or agency a list of each business concern that received a  
17 contract award because that business concern was identi-  
18 fied as a small business concern.

19 (b) LIST CONTENTS.—A list published under sub-  
20 section (a) shall—

21 (1) list business concerns in the order of the  
22 total amount in dollars of contracts between the  
23 Federal Government and that business concern, be-  
24 ginning with the largest total value;

1           (2) include the total amount in dollars of con-  
2           tracts between the Federal Government and each  
3           business concern on such list; and

4           (3) include the name of any parent company of  
5           a business concern on such list.

6 **SEC. 8. CONTRACTING DATABASES.**

7           The Administrator shall, by regulation, establish pro-  
8           cedures to ensure that the Central Contractor Registration  
9           database and any successor database provide an adequate  
10          warning regarding criminal penalties established under  
11          section 16(d) of the Small Business Act (15 U.S.C.  
12          645(d)) for misrepresenting the status of a business con-  
13          cern or person in order to obtain certain contracts with  
14          the Federal Government.

15 **SEC. 9. ENFORCEMENT.**

16          (a) COMPLAINTS.—

17               (1) IN GENERAL.—Any person may file a com-  
18               plaint with the Administrator and the head of the  
19               affected department or agency about the classifica-  
20               tion of a business concern as a small business con-  
21               cern and the Administrator and the head of the af-  
22               fected department or agency shall resolve any com-  
23               plaint filed under this paragraph in a timely man-  
24               ner.

1           (2) REPORTS.—The Administrator shall annu-  
2           ally submit to Congress a report describing any com-  
3           plaints described in paragraph (1) that were filed  
4           during the relevant year and the resolution of any  
5           such complaint.

6           (b) DEBARMENT.—The head of each Federal depart-  
7           ment or agency shall issue or amend the contracting rules  
8           and regulations for that department or agency to ensure  
9           that a business concern shall be debarred from receiving  
10          a Federal contract for a period of not less than 5 years  
11          if that business concern—

12           (1) fraudulently represents that it is a small  
13          business concern as part of a bid for a small busi-  
14          ness contract with that department or agency; or

15           (2) violates this Act or an amendment made by  
16          this Act.

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